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**U.S. District Court
Northern District of Ohio (Cleveland)
CIVIL DOCKET FOR CASE #: 1:06-cv-00866-DAP
Internal Use Only**

H&S Tool, Inc. v. Esco Tool
Assigned to: Judge Dan Aaron Polster
Cause: 35:271 Patent Infringement

Date Filed: 04/12/2006
Date Terminated: 12/16/2008
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

H&S Tool, Inc.

Pat. # 6,955,507
5,542,177

represented by **Cheryl L. Farine**

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I. THE PARTIES

1. H&S Tool, Inc. ("Plaintiff" or "H&S") is an Ohio corporation having its principal place of business at 715 Weber Road, Wadsworth, Ohio 44281.

2. Upon information and belief, Esco Tool is a Massachusetts company having its principal place of business at 50 Park Street, Medfield, Massachusetts 02050 ("Defendant" or "Esco"). Upon information and belief, Defendant engages in business in the State of Ohio, including in this judicial district.

II. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original and exclusive jurisdiction over this action under the above statutes, including 35 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a).

4. Personal jurisdiction exists generally over the Defendant because it has sufficient contacts with the forum as a result of business conducted within the State of Ohio and within the Northern District of Ohio. Personal jurisdiction also exists specifically over the Defendant because of its conduct in making, using, selling, and/or offering to sell, products within the State of Ohio and within the Northern District of Ohio.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d).

III. Count I: PATENT INFRINGEMENT

6. Plaintiff repeats and re-alleges the allegations in paragraphs 1-5 as though fully set forth herein.

7. Plaintiff is the owner of all right to, title to, and interest in, United States Patent No. 6,955,507 ("the '507 Patent"), issued on October 18, 2005, for an invention entitled "Tube Milling Head". A true and correct copy of the '507 Patent is attached hereto as Exhibit A.

8. The '507 Patent is presumed valid and enforceable under 35 U.S.C. §282.

9. Plaintiff is also the owner of all right to, title to, and interest in, United States Patent No. 5,542,177 ("the '177 Patent"), issued August 6, 1996, for an invention entitled "Boiler Tube Bank Repair". A true and correct copy of the '177 Patent is attached hereto as Exhibit B.

10. The '177 Patent is presumed valid and enforceable under 37 U.S.C. §282.

11. Upon information and belief, Defendant has been and is infringing the '507 Patent by making, using, selling, or offering for sale, in the United States, without authority, products that fall within the scope of certain claims of the '507 Patent, including, but not limited to, the products known as the Esco Membrane Removal Head and the Wart Membrane Removal Head. (Exhibit C)

12. Upon information and belief, Defendant has been and is infringing the '177 Patent by making, using, selling, or offering for sale, in the United States, without

authority, products that fall within the scope of certain claims of the '177 Patent, including, but not limited to, the products known as the Esco Membrane Removal Head and the Wart Membrane Removal Head. (Exhibit C)

13. Defendant's making, using, selling, or offering for sale, in the United States, without authority, products that fall within the scope of certain claims of the '507 and '177 Patents, amount to acts of infringement under 35 U.S.C. § 271 (a). On information and belief, such infringement is willful.

15. As a result of Defendant's acts of infringement, Plaintiff has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount not presently known.

16. Plaintiff has no adequate remedy at law against these acts of patent infringement. Unless Defendant is preliminarily and permanently enjoined from its infringement of the '507 and '177 Patents, Plaintiff will suffer irreparable harm.

IV. Count II – Contributory Infringement and Inducement of Infringement

17. Plaintiff repeats and re-alleges the allegations in paragraphs 1-16 as though fully set forth herein.

18. Defendant has had notice of the application that led to the '507 Patent, i.e., Application Serial No. 10/721,539, published as US 2005/0053432, since at least September 30, 2005, if not earlier. Defendant has had notice of the issued '507 patent since at least October 26, 2005. Plaintiff gave notice to Defendant's counsel of the '177 Patent on February 16, 2006.

19. Defendant has knowingly and actively induced, and continues to induce, infringement of the claims of the '507 and '177 Patents by others under 35 U.S.C. § 271 (b), and has contributed, and continues to contribute, to the infringement of the claims of the '507 and '177 Patents by others under 35 U.S.C. § 271 (c).

20. On information and belief, Defendant sales or offers for sale its infringing products knowing the same to be especially made or especially adapted for use in the claimed combinations and methods of the '177 and '507 Patents.

21. Defendants infringing products are not a staple article or commodity of commerce suitable for substantial non-infringing use.

22. With notice of the existence of the '507 and '177 Patents, Defendant knowingly and actively induced, and continues to induce, others to use the inventions set forth in certain claims of the '507 and '177 Patents, including without limitation by Defendant's sales and offer for sale of infringing products to, *inter alia*, Sterling Boiler and Mechanical, Inc.; Minnotte Corp.; and Covanta Energy Corp.

23. With notice of the existence of the '177 Patent, Defendant sells and offers for sale, within the United States, apparatus for use in practicing the patented methods set forth in the claims of the '177 Patent, which constitute a material part of the '177 Patent's claimed invention, knowing the same to be especially made or adapted for use in an infringement of the '177 Patent, and which are not a staple article or commodity of commerce suitable for substantial non-infringing use. As such, Defendant has contributed, and continues to contribute, to infringement of the

'177 Patent by others through its sales and offers for sale to, *inter alia*, Sterling Boiler and Mechanical, Inc.; Minnotte Corp.; and Covanta Energy Corp.

24. The foregoing acts of Defendant constitute active inducement of infringement of the '507 and '177 Patents under 35 U.S.C. §271 (b) and contributory infringement under 35 U.S.C. §271 (c).

25. As a result of Defendant's acts of active inducement of and contributory infringement, Plaintiff has been and continues to be injured and has sustained and will continue to sustain substantial damages in an amount not presently known, to be proven at trial.

26. Plaintiff has no adequate remedy at law against these acts of patent infringement. Unless Defendant is preliminarily and permanently enjoined from its infringement of the '507 and '177 Patents, Plaintiff will suffer irreparable harm.

V. PRAYER FOR RELIEF

Plaintiff, H&S Tool, Inc. respectfully requests that judgment be entered in its favor and against Defendant and that the Court grant the following relief to Plaintiff:

- A. Declare that the '507 and '177 Patents are valid and enforceable;
- B. Declare that Defendant has infringed the '507 and '177 Patents;
- C. Award direct damages for patent infringement, enhanced by a suitable multiplier, given that the infringement is believed to be willful;
- D. Enter a preliminary and thereafter a permanent injunction against Defendant's direct infringement of the '507 and '177 Patents;
- E. Enter a preliminary and thereafter a permanent injunction against

Defendant's conduct that amounts to active inducement of infringement and/or contributory infringement of the '507 and '177 Patents;

- F. Award pre- and post- judgment interest on the damage award, together with attorneys' fees and costs; and
- G. Such other relief as the Court deems just and proper.

VI. JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: April 12, 2006

Respectfully submitted.



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ATTORNEY FOR PLAINTIFF
H&S TOOL, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

H&S TOOL, INC.,)	Case No. 1:06 CV 866
)	
Plaintiff,)	
)	Judge Dan Aaron Polster
vs.)	
)	
ESCO TOOL,)	<u>STIPULATED DISMISSAL ENTRY</u>
)	
Defendant.)	

On December 16, 2008, the Court held a teleconference with the parties and their respective counsel. During that teleconference, the parties informed the Court that after lengthy settlement discussions, including two Court-mediated settlement conferences, the case had been resolved. Accordingly, the above-captioned complaint and the counterclaims resulting therefrom are settled and dismissed with prejudice. Notice by the Clerk of Courts is hereby waived.

The Court retains jurisdiction over the settlement agreement.

IT IS SO ORDERED.

/s/Dan Aaron Polster December 16, 2008
Dan Aaron Polster
United States District Judge

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V.

Defendant

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Counter-Claimant

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V.

Counter-Defendant**H&S Tool, Inc.**represented by **Cheryl L. Farine**

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*ATTORNEY TO BE NOTICED***Donald E. Burton**

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Date Filed	#	Docket Text
04/12/2006	<u>1</u>	Complaint with jury demand against Esco Tool (1 summons and Magistrate Consent Form issued). Filed by H&S Tool, Inc. Filing fee paid; receipt number 54660000053. (Attachments: # <u>1</u> Exhibit A - Patent# <u>2</u> Exhibit B - Patent# <u>3</u> Exhibit C - News Story# <u>4</u> Civil Cover Sheet)(S, He) (Entered: 04/13/2006)
04/12/2006	<u>2</u>	Random Assignment of Magistrate Judge Patricia A. Hemann. (S, He) (Entered: 04/13/2006)
04/12/2006	<u>3</u>	Corporate Disclosure Statement filed by H&S Tool, Inc. (S, He) (Entered: 04/13/2006)
06/26/2006	<u>4</u>	Return of Service Executed upon EscoTool by personal service on June 25, 2006 filed by H&S Tool, Inc. (Farine, Cheryl) Modified text on 6/27/2006 (E, P). (Entered: 06/26/2006)
07/10/2006	<u>5</u>	Proposed Motion for extension of time until 30 days to answer <i>Complaint</i> filed by H&S Tool, Inc.. (Farine, Cheryl) (Entered: 07/10/2006)
07/13/2006	<u>6</u>	Stipulation & Order granting defendant until 8/10/06 to answer complaint. Signed by Judge Dan Aaron Polster on 7/13/06. (P, R) (Entered: 07/13/2006)

08/10/2006	<u>7</u>	Answer , <i>Affirmative Defenses</i> , Counterclaim against H&S Tool, Inc. filed by Esco Tool. Related document(s) <u>1</u> . (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B) (Weber, Ray) (Entered: 08/10/2006)
08/10/2006		(Court only) Utility Event adding attorneys Ray L. Weber, Laura J. Gentilcore, Mark L. Weber for counter-claimant Esco Tool. Related document(s) <u>7</u> . (S,T) (Entered: 03/15/2007)
08/30/2006	<u>8</u>	<i>Plaintiff's Reply to Counterclaim and Affirmative Defenses</i> (Related Doc # <u>7</u>) filed by H&S Tool, Inc.. (Farine, Cheryl) (Entered: 08/30/2006)
09/06/2006	<u>9</u>	Case Management Conference Scheduling Order. Case management conference to be held on 9/21/2006 at 9:30 AM at Chambers 18B before Hon. Dan Aaron Polster. Signed by Judge Dan Aaron Polster on 9/6/06. (P, R) (Entered: 09/06/2006)
09/13/2006	<u>10</u>	Corporate Disclosure Statement filed by Esco Tool. (Weber, Ray) (Entered: 09/13/2006)
09/18/2006	<u>11</u>	Report of Parties' Planning Meeting under Federal Rules of Civil Procedure 26(f) and Local Rule 16.3(b) filed by H&S Tool, Inc. (Farine, Cheryl) Modified text on 9/28/2006 (E, P). (Entered: 09/18/2006)
10/03/2006		Minute Order of Telephone Conference held on 10/3/06 (non-document). Plaintiff to send a clarifying letter to defendant by 10/6/06, with a copy to faxed to chambers; defendant to respond by 10/25/06, also with a copy faxed to chambers. Telephone Conference set for 10/30/2006 3:00 PM. Counsel and parties to be on the call. By Judge Dan Aaron Polster on 10/3/06. (P, R) (Entered: 10/03/2006)
10/30/2006		Minutes of proceedings [non-document]. Telephone Conference held on 10/30/06 before Judge Dan Aaron Polster. The parties agree to submit demand language, including a copy to be submitted to the court. Telephone Conference set for 11/13/2006 02:00 PM in Chambers 18B before Hon. Dan Aaron Polster. (Court Reporter none.) (Gadomski, Y.) Modified text on 10/31/2006 (Gadomski, Y.). (Entered: 10/31/2006)
11/29/2006		Minutes [non-document] Order of Telephone Conference held on 11/21/06. Parties to create a case management schedule, which shall be filed and forwarded to the Court by the end of the week of 12/4/06. By Judge Dan Aaron Polster on 11/29/06. (P, R) Modified text on 12/4/2006 (E, P). (Entered: 11/29/2006)
12/08/2006	<u>12</u>	Amended Report of Parties' Planning Meeting under Federal Rules Civil Procedure 26(f) and Local Rule 16.3(b) filed by H&S Tool, Inc.. (Farine, Cheryl) Modified text on 12/12/2006 (E, P). (Entered: 12/08/2006)
03/15/2007	<u>13</u>	Motion for Submitting Second Amended Report filed by all parties. (Attachments: # <u>1</u> Second Amended Report)(Farine, Cheryl) (Entered: 03/15/2007)
03/16/2007	<u>14</u>	Motion for Submitting Second Amended Report filed by all parties. (Attachments: # <u>1</u> Second Amended Report)(Farine, Cheryl) (Entered: 03/16/2007)

03/16/2007	<u>15</u>	Order - The deadline for amending pleadings and adding parties is 4/30/07. The deadline for Fact Discovery is 10/1/07. Expert Reports are due on or before 10/31/07, with Rebuttal Reports due 11/30/07. The deadline for Expert Discovery is 1/15/08. Dispositive Motions are due on or before 1/30/08. Status Conference set for 6/27/2007 9:00 AM in Chambers 18B before Hon. Dan Aaron Polster. Signed by Judge Dan Aaron Polster on 3/16/07.(P,R) (Entered: 03/16/2007)
06/27/2007		Minutes of Proceedings (non-document). Status Conference held on 6/27/07. A future teleconference is scheduled for Tuesday, July 24, 2007 at 12:00 p.m., to be initiated by Plaintiff. During the July 24, 2007 teleconference, Plaintiff will inform the Court whether the work-around design presented during the status conference is a vehicle for resolving the case, and if not, why not. Counsel are also reminded of the Court's strong suggestions regarding future communications from the respective CEOs, and any contemplated courses of action involving manufacturer's agents. (P, R) Modified on 6/28/2007 (E, P). (Entered: 06/27/2007)
07/24/2007		Minutes of Proceedings (non-document). Telephone Conference held on 7/24/07. Telephone Conference set for 8/8/2007 11:30 AM before Hon. Dan Aaron Polster. Call to be initiated by counsel for the plaintiff. (P,R) (Entered: 07/24/2007)
08/09/2007		Minute Order of Telephone Conference held on 8/8/07 (non-document). As a result of the teleconference, it was agreed that the parties would engage in formal discovery. Counsel for the parties shall confer to agree on, and create, a newly revised case schedule. The agreed-upon schedule shall be filed with the Court. Additionally, a further teleconference is scheduled for Wednesday, November 14, 2007, at 12:00 noon eastern standard time, to be initiated by counsel for Plaintiff. The parties shall participate in the teleconference along with their respective counsel. By Judge Dan Aaron Polster on 8/9/07.(P,R) Modified on 8/9/2007 (P, R). (Entered: 08/09/2007)
10/11/2007	<u>16</u>	Third Amended Report of Parties' Planning Meeting. Parties do not consent to this case being assigned to the magistrate judge filed by all parties. (Farine, Cheryl) Modified text on 10/11/2007 (S, T). (Entered: 10/11/2007)
11/15/2007		Minute Order of Telephone Conference held on 11/15/07 (non-document). A further teleconference is scheduled for Monday, January 14, 2008 at 1:30 p.m., participants to call the same conference line, with counsel and parties to participate again. The parties and counsel shall continue to engage in settlement negotiations. Counsel and the parties are also reminded of the Court's admonishment regarding statements made to others about the pending litigation. By Judge Dan Aaron Polster on 11/15/07. (P,R) (Entered: 11/15/2007)
11/15/2007	<u>17</u>	Stipulated Protective Order. Signed by Judge Dan Aaron Polster on 11/15/07. (C,B) (Entered: 11/15/2007)
01/14/2008		Minutes of Proceedings (non-document). The Court conducted a teleconference with counsel and representatives of corporate parties on 1/14/08. As a result, the deadline for fact discovery is extended to March 10,

		2008, and all corresponding dates are similarly extended by 30 days. Also, a teleconference is scheduled for 12:00 noon, eastern standard time, on March 19, 2008, in which counsel and client representatives shall participate. Counsel for Plaintiff shall arrange the call and provide all participants with the proper telephone number and access codes necessary to participate in the call. (P,R) (Entered: 01/15/2008)
01/23/2008	<u>18</u>	Attorney Appearance by Charles J. Faruki filed by on behalf of H&S Tool, Inc.. (Faruki, Charles) (Entered: 01/23/2008)
01/23/2008	<u>19</u>	Attorney Appearance by Donald E. Burton filed by on behalf of H&S Tool, Inc.. (Burton, Donald) (Entered: 01/23/2008)
01/24/2008	<u>20</u>	Notice of Appearance of Counsel filed by H&S Tool, Inc.. (Farine, Cheryl) (Entered: 01/24/2008)
01/24/2008		(Court only) Utility Event adding attorney Michael W. Vary for H&S Tool, Inc.. Related document(s) <u>20</u> . (P,G) (Entered: 01/24/2008)
03/04/2008		Pursuant to General Order 2008-06, and in order to facilitate the efficient and timely administration of justice, Magistrate Judge Patricia A. Hemann (who retired effective February 29, 2008) is withdrawn and Magistrate Judge Gregory A. White is assigned. Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge White. (K,K) (Entered: 03/04/2008)
03/06/2008	<u>21</u>	Scheduling Order with Fact Discovery due by 4/30/2008. Telephone Conference is postponed from 3/19/2008 to 10:00 a.m. on 5/13/2008 before Judge Dan Aaron Polster with the call to be initiated by plaintiff's counsel. Signed by Judge Dan Aaron Polster on 3/6/2008. (B,B) (Entered: 03/06/2008)
03/06/2008		(Court only) Set Deadlines and Hearings. Telephone Conference set for 5/13/2008 10:00 AM in to be held telephonically before Judge Dan Aaron Polster. (E,P) (Entered: 05/07/2008)
05/29/2008		Minutes of Proceedings (non-document). The Court conducted a teleconference with parties and counsel on 5/29/08. As a result, some additional fact discovery will continue, and a settlement conference is scheduled for Monday, July 28, 2008, at 9:00 a.m. eastern standard time, to be attended by counsel and party representatives with full settlement authority. Parties shall submit to the Court no later than 12:00 noon on Wednesday, July 23, 2008 confidential and thorough position papers describing the respective party's position, including the latest offer and demand. Deposition testimony that is critical for the Court to mediate the case may also be attached to the position papers. (P,R) (Entered: 06/02/2008)
07/09/2008	<u>22</u>	Notice: Settlement Conference reset for 8/4/2008 1:00 PM in Chambers 18B before Judge Dan Aaron Polster. Parties' position papers due by 4:00 p.m. on 7/28/08 (P,R) (Entered: 07/09/2008)
07/10/2008		Minutes of proceedings [non-document] before Judge Dan Aaron Polster. The Court conducted a teleconference on 7/7/08. As a result, a settlement

		conference is scheduled for Monday, August 4, 2008, at 1:00 p.m. in Chambers 18B of the Stokes Courthouse. Counsel shall make their submissions to the Court as discussed during the teleconference, no later than Monday, July 28, 2008, at 4:00 pm. Representatives from the corporate parties with full settlement authority shall appear in person along with counsel. (P,R) (Entered: 07/10/2008)
08/04/2008		Minutes of Proceedings (non-document). The Court conducted a settlement conference with the parties and their respective counsel on 8/4/08. As a result, the parties shall continue to engage in settlement negotiations. Further, the Court will conduct a teleconference with counsel only on Thursday, August 28, 2008, at 11:30 a.m., to be initiated by counsel for Plaintiff.(P,R) (Entered: 08/04/2008)
10/08/2008		Remark - Teleconference held 8/28/08, Settlement Conference set for 9/29/08 at 9:00 a.m. On 9/26/08 - 9/29/08 Settlement Conference postponed until a later date to be determined. (P,R) (Entered: 10/08/2008)
10/14/2008	<u>23</u>	Notice: Settlement Conference set for 11/3/2008 9:00 AM in Chambers 18B before Judge Dan Aaron Polster. Party position papers due by 12:00 p.m. on 10/30/08. (P,R) (Entered: 10/14/2008)
11/03/2008		Minutes of proceedings [non-document]. A settlement conference was held with the parties and their respective counsel on November 3, 2008. Pursuant to discussions held during the settlement conference, Plaintiff must submit to Defendant a counteroffer no later than 12 p.m. on Monday, November 10, 2008. Plaintiff shall fax a copy of the counteroffer to the Court at (216) 357-7195. Additionally, a teleconference has been scheduled for Tuesday, November 25, 2008, at 9 a.m. The parties and their counsel shall call the Court's bridge line at (216) 357-7088 to participate.(P,R) (Entered: 11/04/2008)
11/25/2008		Minutes of proceedings [non-document] before Judge Dan Aaron Polster. The Court held a teleconference with the parties and their respective counsel on November 25, 2008. A follow-up teleconference has been scheduled for Tuesday, December 9, 2008, at 9:30 a.m. The parties and their counsel shall call the Court's bridge line at (216) 357-7088 to participate. (P,R) (Entered: 11/25/2008)
12/09/2008		Minutes of proceedings [non-document] before Judge Dan Aaron Polster. A teleconference was held with the parties and their respective counsel on December 9, 2008. A follow-up teleconference has been scheduled for Tuesday, December 16, 2008, at 11 a.m. The parties and counsel shall call the Court's bridge line at (216) 357-7088 to participate. (P,R) (Entered: 12/09/2008)
12/16/2008		Minutes of proceedings [non-document] before Judge Dan Aaron Polster.Telephone Conference held on 12/16/08. Case settled. (P,R) (Entered: 12/16/2008)
12/16/2008	<u>24</u>	Stipulated Dismissal Entry . Complaint and counterclaims settled and dismissed with prejudice. Judge Dan Aaron Polster on 12/16/08. (P,R) (Entered: 12/16/2008)

1 COPIES OF COMPLAINT WITH
ORIGINAL AND 1 COPIES OF SUMMONS
AND MAGISTRATE CONSENT FORM ISSUED TO
COUNSEL FOR PLAINTIFF ON 4-12-06 *WLL*

APR 11 2006
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

H&S TOOL, INC.
715 Weber Road
Wadsworth, Ohio 44281

Plaintiff,

v.

ESCO TOOL
50 Park Street
Medfield, Massachusetts 02052

Defendant.

Case No. **1:06 CV 866**

JUDGE POLSTER

Judge:

MAG. JUDGE HEMANN

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiff, H&S Tool, Inc., brings this action for patent infringement against Defendant, Esco Tool ("Esco") and alleges as follows: